

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DANIEL L. SPUCK, :  
Petitioner, :  
v. : Case No. 3:13-cv-3-KRG-KAP  
J. F. MAZURKIEWICZ, :  
Superintendent, S.C.I. Rockview, :  
Respondent :

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto in accordance with the Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on January 3, 2013, docket no. 2, recommending that the petition either be dismissed for abuse of the writ or, if petitioner amended the petition, transferred to the Court of Appeals for the Third Circuit for consideration as an application for authorization to file a second or successive petition under 28 U.S.C. § 2244(b)(3).

The petitioner was notified that pursuant to 28 U.S.C. § 636(b)(1), he had fourteen days to serve and file written objections to the Report and Recommendation. Petitioner filed timely objections, docket no. 4, but they are meritless. Petitioner also filed a supplement, docket no. 5, protesting that his motion for appointment of counsel has not been ruled on.

After de novo review of the record of this matter, together with the Report and Recommendation and the timely objections thereto, the following order is entered:

AND NOW, this 20<sup>th</sup> day of February, 2013, it is

ORDERED that the petitioner's petition for a writ of habeas corpus is denied as an abuse of the writ. No certificate of appeal shall issue. Petitioner's motion for appointment of counsel is denied. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

KIM R. GIBSON,  
UNITED STATES DISTRICT JUDGE

Notice to counsel of record by ECF and by U.S. Mail to:

Daniel Luke Spuck CZ-4285  
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